LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
JUL 14 1965
JOHN F. DAVIS, CLERK

No. ~~346~~ 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

CANADA PACKERS, LIMITED,

Petitioner,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD, DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY, ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, GRAND TRUNK WESTERN RAILROAD COMPANY, NEW YORK CENTRAL RAILROAD COMPANY, THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, WABASH RAILROAD COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CHARLES B. MYERS,
611 Field Building
Chicago, Illinois 60603
Attorney for Petitioner

July 1965

McCORMICK & HENDERSON INC., CHICAGO, ILL.

INDEX

	PAGE
Opinions below	2
Jurisdiction	2
Question presented	2
Statutes involved	3
Statement	3
Proceedings before the Commission	3
Proceedings in Federal Courts	5
Reasons for granting the writ	6
Conclusion	11
Appendix A—Court of Appeals Opinion and Judgment	App. 1
Appendix B—Statutes	App. 7

CITATIONS

PAGE

CASES:

Canada Packers, Ltd. v. Atchison, Topeka & Santa Fe Railway Co., Et al., 313 I.C.C. 759 4

Consolidated Rendering Co. v. Atchison, T. & S.F. Ry. Co., 287 I.C.C. 673; 300 I.C.C. 87 .....3, 4, 8

International Nickel Co. v. Director General, 66 I.C.C. 627 10

Lewis-Simas-Jones Co. v. Southern R. Co., 283 U.S. 654 (1931) 6, 8, 10, 11

Louisville & N. R. Co. v. Sloss-Sheffield Co., 269 U.S. 217, 234 7

News Syndicate Co. v. New York C. R. Co., 275 U.S. 179 (1927) 6, 7, 8, 10, 11

STATUTE:

49 U.S. Code §§ 1, 6, 8, 15, 16 .....3, 5, 9, App. 9-13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No.

CANADA PACKERS, LIMITED,

Petitioner,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD, DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY, ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, GRAND TRUNK WESTERN RAILROAD COMPANY, NEW YORK CENTRAL RAILROAD COMPANY, THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, WABASH RAILROAD COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Canada Packers, Limited, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The decision of the Interstate Commerce Commission, Division 2, dated May 24, 1961, is reproduced in Appendix of Defendants-Appellants,[1] pages 13-21, and is reported at 313 I.C.C. 759. The findings of fact and conclusions of law of the United States District Court for the Northern District of Illinois, Eastern Division, entered March 20, 1964 (App. Dfts., pp. 36-38) are not reported.

The opinion of the Court of Appeals, entered March 2, 1965 (Appendix A, *infra*, pp. App. 1-App. 6) is reported at 342 F. 2d 563.

JURISDICTION

The judgment of the District Court was entered March 20, 1964 (App. Dfts., p. 38). The judgment of the Court of Appeals, reversing the District Court, was entered March 2, 1965 (Appendix A, *infra*, p. App. 7). A petition for rehearing, timely filed on March 17, 1965, was denied on April 16, 1965. (Appendix A, *infra*, p. App. 8)

The jurisdiction of this Court is invoked under 28 U. S. Code § 1254(1).

QUESTION PRESENTED

Where American railroads joined with Canadian railroads in joint through international rates which applied to and were charged on shipments from origins in the United States to destinations in Canada and such joint rates were found by the Interstate Commerce Commission to be in excess of maximum reasonable rates, did the Commission exceed its jurisdiction in awarding reparation in the full amount of the excess charges, including the proportion of the charges attributable to transportation in Canada?

---

[1] For brevity, the Appendix of Defendants-Appellants is hereinafter referred to as App. Dfts.

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act here involved are Sections 1, 6, 8, 15 and 16, 49 U. S. Code §§ 1, 6, 8, 15 and 16, and are reproduced in Appendix B hereto, pp. App. 9 - App. 13.

STATEMENT

Proceedings before the Commission

In 1950, petitioner filed an informal complaint with the Commission alleging that the joint through international rates charged by the American railroad respondents and their connecting Canadian carriers for the through transportation of shipments of potash from Carlsbad and Loving, New Mexico,[2] to Toronto, West Toronto and Welland, Ontario; Montreal, Quebec; and St. John, New Brunswick, Canada, during the period January 5, 1948, through May 5, 1948, were unjust and unreasonable, and reparation was sought. All of the shipments in question crossed the international border at Detroit or at Port Huron, Michigan.

Action on the informal complaint was deferred, awaiting decisions in similar cases then pending before the Commission, including *Consolidated Rendering Co.* v. *Atchison, T. & S. F. Ry. Co.*, 287 I.C.C. 673, 300 I.C.C. 87, involving the question of whether existing basic rates (on a number of commodities, including potash) as increased by certain interim or temporary percentage increases in effect from January 5 through May 5, 1948, were unreasonable to the extent they exceeded basic rates plus lower permanent in-

[2] The complaint before the Commission also involved shipments from Trona, California. Full reparation has been received on these shipments, and they are not in issue.

creases prescribed by the Commission. (App. Dfts., pp. 29-31) On March 18, 1957, the Commission handed down its decision in *Consolidated Rendering, supra,* holding that, during the period in question, rates on potash (plus the temporary increases) from Carlsbad and Loving, New Mexico, to Port Huron and Detroit, Michigan, were unreasonable to the extent they exceeded the basic rates plus the permanent increases found by the Commission to be reasonable. (App. Dfts., pp. 31-33) When the railroads refused to satisfy petitioner's informal complaint on the same relative basis, petitioner timely filed a formal complaint. On March 24, 1961, the Commission, Division 2, in *Canada Packers, Ltd.* v. *Atchison, Topeka & Santa Fe Railway Co.,* 313 I.C.C. 759, held that the joint through international rates assessed on petitioner's shipments during the period in question, were unjust and unreasonable and that petitioner was entitled to reparation on the entire transportation in the amount of the difference between the charges collected and those which would have accrued at the lower rates found by the Commission to be just and reasonable. The Commission rejected respondents' argument that the amount of reparation could not exceed the award made in *Consolidated Rendering* to Port Huron and Detroit, the border points at which petitioner's shipments crossed into Canada. A petition for reconsideration was denied on October 9, 1961. (App. Dfts., pp. 13, 19-21)

By order dated August 28, 1962, the Commission directed the respondents and certain Canadian railroads to pay petitioner specific amounts of reparation, with interest, "insofar as the transportation took place over their lines in the United States." (App. Dfts., pp. 22-25) Respondents refused to pay reparation in the amount awarded but paid to petitioner an amount computed as if petition-

er's shipments had terminated at Detroit and Port Huron.[3] (App. Dfts., pp. 35-36)

Proceedings in Federal Courts

Petitioner filed suit in the District Court[4] under Section 16(2) of the Interstate Commerce Act, 49 U.S. Code § 16 (2), claiming the difference between the amount paid by respondents and the amount set forth in the Commission's order. The District Court concluded that the joint through rates were the applicable rates, that respondents' failure to establish lawful rates applicable to the border points violated the Act, and that the assessment and collection of the unreasonable charge was a tort for which the respondents were jointly and severally liable without regard to the proportion of charges attributable to the transportation in the foreign country. Judgment was entered for petitioner. (App. Dfts., pp. 37-38)

The Court of Appeals reversed that judgment concluding that the respondents had met the burden of proving rates from Carlsbad and Loving, New Mexico, to the border points, that those rates must be considered as a maximum guide in awarding damages to petitioner, and that any other conclusion would mean that the respondent railroads would be required to pay reparation to a Canadian consignee on account of freight charges received for transportation performed within Canada by Canadian railroads not parties to the case. It found such a result prohibited by the territorial limitation provisions of Section 1 of the Interstate Commerce Act. (Appendix A, pp. App. 5-App. 6)

---

[3] The Commission ordered payment of $6,694.56, plus interest, on the shipments in question. Respondents paid $5,304.01, plus interest, leaving an unpaid balance of $1,390.55, excluding interest. (App. Dfts., pp. 35-36)

[4] The American railroads were the only ones sued.

REASONS FOR GRANTING THE WRIT.

I.

The decision of the Court of Appeals is directly in conflict with this Court's decisions in *Lewis-Simas-Jones Co.* v. *Southern R. Co.*, 283 U.S. 654 (1931), and *News Syndicate Co.* v. *New York C. R. Co.*, 275 U.S. 179 (1927).

The lower court's discussion of *Lewis* and *News Syndicate* and its conclusion that those cases are not governing here very plainly show that it misconstrued what this Court said in those two decisions in upholding awards of full reparation based on excessive joint through international rates.

In *Lewis*, the defendant was an American railroad which had joined with a Mexican railroad in a joint through international rate on cow peas from Navojoa, Sonoro, Mexico, to San Francisco, California. The shipments moved through the border point of Nogales, Arizona. Upon complaint, the Interstate Commerce Commission found the joint rate unreasonable and ordered the American carrier to pay the full amount of reparation, including that portion representing charges attributable to transportation in Mexico. The railroad refused to make payment, and the shipper brought suit in a state court to enforce the award.

The trial court found that the railroad also maintained a rate from Nogales to San Francisco on this same commodity which was lower than the joint through rate, that the Commission had made no finding respecting the lawfulness of this lower rate and that it was reasonable and lawful for application on shipments from the border point to San Francisco. It dismissed the shipper's suit on the ground that the Commission's order was void for lack of jurisdiction. (283 U.S. 654, 656, 657)

On appeal, the district court of appeal affirmed, stating that unlike *News Syndicate*, the railroad in the instant case had maintained a rate from the boundary to destination and that the shipper had not been compelled to pay the joint through rate by reason of any violation of the Act on the part of the defendant.

This Court reversed, holding that the lower court erred in distinguishing the case from *News Syndicate* and that *News Syndicate* was controlling. (283 U.S. 654, 659, 663) In passing on the lower court's conclusion regarding the applicability of the rate from the border point to destination, this Court said (page 663 of 283 U.S.) "The trial court's findings are not sufficient to show that *at the time* the shipments in question moved defendant maintained a *just and reasonable* rate *applicable* to the transportation of such shipment over its lines from the international boundary to destination. The tariff, as described in the findings, does not purport to *apply* to the American part of such international transportation." (Emphasis supplied)

The Court of Appeals in the case at bar committed the same error as the lower court in *Lewis* by failing to recognize the distinction between the mere existence of a rate between the named American points and a rate which *at the time* the shipment moved was *just* and *reasonable* and which *applied* (to the exclusion of every other rate[5]) on the American portion of the international transportation. At no time in the course of this proceeding, either at the Commission level or before the lower courts, have the respondents contended or presented evidence that the rates from

[5] There can be only one applicable (legal) rate on a given shipment. *Louisville & N. R. Co.* v. *Sloss-Sheffield Co.*, 269 U.S. 217, 234.

Carlsbad and Loving to Detroit and Port Huron, in effect *at the time* the shipments in question moved were the *just and reasonable* rates *applicable* to the American part of the international transportation. The railroads obviously could not contend these rates were lawful because the Commission had already decided in *Consolidated Rendering, supra,* that during the time the traffic moved *these rates were unjust* and *unreasonable:* Thus, the respondents have failed to, indeed could not, make the showing required in the *Lewis* case. And as this Court said at page 663 of that case, the burden was upon the carrier to bring forward evidence that a rate for the American part of the through international transportation had been established as required by the act. Respondents did not and could not carry that burden because the rates to Detroit and Port Huron were never—at any time—applicable to the American portion of this international transportation. The only rates which did apply on petitioner's shipments were the excessive joint through international rates.

The finding by the court below that defendants met their burden of proving rates from Carlsbad and Loving to the Canadian border points is patently erroneous and should be reversed.

II.

The Court of Appeals was of the opinion that requiring the American railroad respondents to pay reparation on account of freight charges received for transportation performed within Canada was a result prohibited by the territorial limitation provisions of Section 1 of the Act.

The lower court is wrong on this critical point also for *Lewis* and *News Syndicate* make it abundantly clear that the Interstate Commerce Act applies to international commerce to the extent the transportation takes place within

the United States, that the railroads are required to establish just and reasonable rates between the international boundary and the American origin or destination, as the case may be, and if they fail to establish such rates they are liable to shippers for any damages resulting therefrom. §§ 1 (1) (c), (2) and (5), 6 (1), (7), and 8. (283 U. S. 654, 660; 275 U.S. 179, 186, 187) The demand for reparation is based on such failure and it claims damages suffered by the shipper as a result of being compelled to pay the excessive joint international rate maintained by the American railroad. Under section 16(1) the Commission has jurisdiction and the duty to determine the reasonableness of the joint through international rate in ascertaining the shipper's damages. (283 U. S. 654, 659-662)

The crux of this Court's decisions approving full reparation, without any reduction for that portion of the freight charges representing foreign transportation, is clearly stated, at page 660 of the *Lewis* case:

> The collection by a common carrier of exorbitant charges is a tort (Smith v. Chicago & N. W. R. Co. 49 Wis. 443, 448, 5 N. W. 240) and the general rule as to liability of joint tort-feasors applies where two or more connecting carriers combine to impose excessive charges for transportation over their connecting lines. *Louisville & N. R. Co.* v. *Sloss-Sheffield Co.* 269 U.S. 217, 232, 233, 70 L. ed. 242, 249, 250, 46 S. Ct. 73. Defendant is liable for any violation of the Act by it that caused or contributed to cause damage to plaintiff without regard to the proportion of the charges attributable to the foreign transportation or paid to the foreign carrier. *News Syndicate Co.* v. *New York C. R. Co. supra* (275 U. S. 187, 188, 72 L. ed. 228, 229, 48 S. Ct. 39).

The opinion below does not intimate, and certainly does not expressly state, why the so-called territorial limitations of Section 1 did not prevent the awarding of full reparation

in *Lewis* and *News Syndicate*. It seems to logically follow that, if the Commission's jurisdiction is so limited in this proceeding, it also lacked that power in the two situations involved in these earlier decisions of this Court. The Court of Appeals takes no note of this obvious contradiction between its opinion and the decisions of this Court.

III.

If the decision below is not reversed, it will overrule Commission precedents dating at least as far back as 1922, *International Nickel Co.* v. *Director General*, 66 I.C.C. 627, where the Commission found joint international rates from Canadian origins to destinations in New Jersey to be unreasonable and awarded reparation for the full amount of damages sustained by the shipper. Aside from this disruption in the uniform administration and interpretation of Section 16 and other pertinent sections, the decision, if permitted to stand, will render ineffectual the Commission's power to grant reparation on joint through international rates. If the opinion below is validated, American railroads will be able to join with foreign lines in publishing and assessing joint through international rates which are outrageously high in relation to the service performed, so long as they also maintain a reasonable rate between the border points and origins or destinations in the United States; the fact that such lower rate will not be applicable to the American portion of the through international transportation will be immaterial. The Commission will have no power to award reparation to a shipper for the inordinately excessive international rate. Thus, there would be an injury for which there is no remedy.

If petitioner is correct in its assertion that the lower court's decision could deprive the Commission of its jurisdiction then petitioner respectfully suggests that the Court may wish to invite the Interstate Commerce Commission

to give its views as *amicus curiae* on the subject before ruling on this petition.

IV.

If the lower court was correct in distinguishing the instant case from *Lewis* and *News Syndicate*, then its "maximum guide" test, which so far as petitioner can determine is wholly without precedent, would come into play and would make this a case of first impression. In that event, the Commission and the shippers and carriers of the United States and adjoining foreign countries would seem entitled to have this Court pass upon that novel theory and the radical effects it might have on a matter of such great and continuing importance. The views of the Commission might be especially helpful in the premises.

CONCLUSION.

The opinion of the Court of Appeals is so patently in conflict with this Court's decisions in *Lewis* and *News Syndicate* as to make this an appropriate case for summary reversal. That opinion would result in rendering the Commission virtually powerless in its future administrative handling of reparation claims on international shipments and would leave injured shippers without a remedy.

If the lower court is correct in distinguishing this case from *News Syndicate* and *Lewis*, then the Supreme Court should pass on that decision as one of first impression and give the shipping public and transportation industry the benefit of final decision thereon.

Respectfully submitted,

Charles B. Myers

CHARLES B. MYERS
Attorney for Canada Packers, Ltd., Petitioner
611 Field Building
Chicago, Illinois 60603

July, 1965

APPENDIX

APPENDIX "A"

In the

United States Court of Appeals

For the Seventh Circuit

No. 14659 SEPTEMBER TERM, 1964 — JANUARY SESSION, 1965

CANADA PACKERS, LIMITED, a Canadian corporation,
Plaintiff-Appellee,

-vs.-

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *et al.*,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

March 2, 1965

Before HASTINGS, *Chief Judge,* and DUFFY and SCHNACKENBERG, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge*—Defendants, The Atchison, Topeka and Santa Fe Railway Company and several other railroads[1] appeal (1) from a judgment of the district

---

[1] The Chesapeake and Ohio Railway Company, Chicago South Shore and South Bend Railroad, Detroit, Toledo and Ironton Railroad Company, Elgin, Joliet and Eastern Railway Company, Grand Trunk Western Railroad Company, New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, Wabash Railroad Company.

court for $1,390.55 and interest thereon, and (2) an order granting plaintiff attorneys' fees, plus costs of the action.

Plaintiff in its complaint sought enforcement of an order of the Interstate Commerce Commission, pursuant to the Interstate Commerce Act, 49 U.S.C.A. § 1, *et seq.*, against defendants as common carriers.

The complaint alleges that defendants transported carload shipments of potash from Carlsbad and Loving, New Mexico, to plaintiff at the following points in Canada: Toronto, West Toronto and Welland, Ontario, Montreal, Quebec, and St. John, New Brunswick, and demanded and collected from plaintiff charges which were unjust and unreasonable, in violation of section 1 of said act.

The complaint also alleges that, pursuant to proceedings before it, the Commission on August 28, 1962 entered an order which found that plaintiff herein is entitled to reparation from defendants "*insofar as the transportation took place over their lines in the United States*"[2] and directed defendants and their Canadian connecting carriers to pay plaintiff reparations totaling $6,694.56 plus interest, upon which defendants have paid all that is due except the sum for which suit was here brought.

Defendants contend that they have complied with the terms of the Interstate Commerce Commission's reparation order and no additional amounts are owing to plaintiff. They emphasize that the reparation order of August 28, 1962 was expressly restricted to an award for transportation over lines in the United States. They assert that the amounts listed in the order represent the difference between (a) the total charges paid for the entire transportation service from the New Mexico origins to the

[2] Italics supplied for emphasis.

Canadian destinations ($14.60 per ton to Toronto and Welland, Ontario, $17.20 to Montreal, Quebec, and $20.40 to Saint John, New Brunswick) and (b) the total charges recomputed retroactively on the basis of maximum rates that are 80¢ per ton lower to Toronto and Welland than those charged ($13.80 in lieu of $14.60), 120¢ lower to Montreal ($16.00 in lieu of $17.20), and 140¢[3] lower to Saint John ($18.60 in lieu of $20.40).

They argue that the amounts listed in the Commission's order would require refunds of charges paid for transportation performed by Canadian railroads within Canada as well as on transportation performed within the United States.

1. At the time the shipments in question moved in this case, defendants maintained certain freight rates on potash from Carlsbad and Loving, New Mexico, to the United States border points where these shipments crossed into Canada. In a decision issued March 18, 1957, *Consolidated Rendering Co.* v. *Atchison, Topeka & Santa Fe Ry. Co., et al.*, 300 I.C.C. 87, the Commission held that the freight rates on potash that had been in effect between January 5, 1948 and May 5, 1948 from Carlsbad and Loving, New Mexico, to Detroit and Port Huron, Michigan, and Vanceboro, Maine, were unreasonably high, and prescribed, retroactively, maximum reasonable rates on a lower level. A comparison of the rates in effect to these border crossings, at the time plaintiff's shipments moved, with the rates subsequently prescribed (in the *Consolidated Rendering*

[3] This figure of 140¢ was stipulated in this case. It probably should have been 180¢.

case) as maximum reasonable rates to those points, is as follows (rates shown are on a per-ton basis):

Border Point	Rates at Time of Movement	Rates Later Prescribed as Maximum Reasonable	Difference
Detroit	$13.32	$12.70	62¢
Port Huron	13.32	12.70	62¢
Vanceboro	17.28	16.00	128¢

In the present proceeding, the Commission in 1962 held that the rates charged on the international shipments from Carlsbad and Loving to Toronto, Welland, Montreal and Saint John were unreasonable, and prescribed, retroactively, still lower rates as maximum reasonable rates, and ordered that plaintiff was entitled to reparation in the amount of the difference between the charges collected and those that would have accrued at the rates found to be reasonable, and thereby made the computations upon which the order of August 28, 1962 was based. While that order purports to limit its effect to transportation over lines in the United States, it is obvious that the computations upon which it is based were not so restricted.

Plaintiff seeks support for the Commission's order in *News Syndicate Co.* v. *N. Y. C. R. R.*, 275 U.S. 179. However, in that case, where there was a through rate from a point in Canada to New York City within the United States, the court pointed out, at 186-7, that it was the duty of the railroad to establish a rate from the international boundary to New York City, in the absence of which the shipper had been compelled to pay the through charges. The court sustained the jurisdiction of the Commission to determine the reasonableness of the charges exacted, *i.e.*, the through rate. In the case at bar, rates from New Mexico to the border points were in effect, and hence this case is not governed by *News Syndicate*.

Plaintiff also relies on *Lewis, etc. Co.* v. *Southern Pac. Co.*, 283 U.S. 654. However, that case was controlled by *News Syndicate*, as the court expressly stated, at 663. The defendant in *Lewis* is an interstate carrier by railroad and its lines connect at the international boundary at Nogales, Arizona with the line of a Mexican common carrier by railway extending from Navojoa, Sonora. Three carloads of cowpeas were shipped from Navojoa to San Francisco, California, on through bills of lading issued by the foreign line and the rate charged was that stated in a joint tariff filed by the carriers with the Commission and its counterpart in Mexico. A complaint seeking reparations before the Commission alleged that the joint through rate was unreasonable. Defendant moved to dismiss the complaint on the ground that the Commission lacked jurisdiction over rates from points in a foreign country to points in the United States. However, the court pointed out that the tariff did not purport to apply to the American part of such international transportation which "must be distinguished from a through carload shipment brought to defendant at the boundary by a foreign carrier". The court, at 663, commented upon the failure of defendant carrier to bring forward evidence that a rate on its own line to the international border "had been established as required by the Act."

In the case at bar, defendants met the burden of proving the rates from Carlsbad and Loving, New Mexico to the Canadian border points. We are therefore required to conclude that the latter rates must be considered as a maximum guide in awarding damages to plaintiff. To conclude otherwise would mean that the defendant rail-

roads would be required to pay reparation to a Canadian consignee on account of freight charges received for transportation performed within Canada by Canadian railroads which are not parties to this action. Such a result clearly is prohibited by the territorial limitation provisions of section 1 of the Interstate Commerce Act. 49 U.S.C.A. §§ 1, *et seq.*

For the reasons herein stated, the judgment and the order from which defendants have appealed are reversed.

JUDGMENT AND ORDER REVERSED

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

In the United States Court of Appeals
For the Seventh Circuit

Tuesday, March 2, 1965

BEFORE

HON. JOHN S. HASTINGS, *Chief Judge*
HON. F. RYAN DUFFY, *Circuit Judge*
HON. ELMER J. SCHNACKENBERG, *Circuit Judge*

CANADA PACKERS, LIMITED, a Canadian corporation,
Plaintiff-Appellee,

No. 14659 -vs.-

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *et al.*,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment and the order of the said District Court in this cause appealed from be, and the same are hereby, REVERSED, with costs, in accordance with the opinion of this Court filed this day.

In the

United States Court of Appeals

For the Seventh Circuit

Friday, April 16, 1965

BEFORE

Hon. John S. Hastings, *Chief Judge*
Hon. F. Ryan Duffy, *Circuit Judge*
Hon. Elmer J. Schnackenberg, *Circuit Judge*

Canada Packers, Limited,
Plaintiff-Appellee,

No. 14659 -vs.-

The Atchison, Topeka and Santa Fe Railway Company, *et al.*,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

IT IS ORDERED by the Court that the petition for a rehearing of this cause, filed by appellee, be, and the same is hereby DENIED.

APPENDIX "B"

PERTINENT PROVISIONS OF THE INTERSTATE COMMERCE ACT
(49 U. S. Code § 1, et seq.)

SECTION 1 (49 U. S. Code § 1) —

(1) That the provisions of this part shall apply to common carriers engaged in —

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

* * * *

— from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation takes place within the United States.

(2) The provisions of this part shall also apply to such transportation of passengers and property, but only in so far as such transportation takes place within the United States, but shall not apply —

* * * *

(5) All charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

SECTION 6 (49 U. S. Code § 6) —

(1) That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. . . .

. . . . .

(7) No carrier, unless otherwise provided by this part, shall engage or participate in the transportation of passengers or property, as defined in this part, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this part; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

. . . . .

SECTION 8 (49 U. S. Code § 8) —

That in case any common carrier subject to the provisions of this part shall do, cause to be done, or permit to be done any act, matter, or thing in this part prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this part required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this part, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

• • • •

SECTION 15 (49 U. S. Code § 15) —

(1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint

rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

* * * *

SECTION 16 (49 U. S. Code § 16) —

(1) That if, after hearing on a complaint made as provided in section thirteen of this part, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this part for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

(2) If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any State court of general jurisdiction having jurisdiction of the

parties, a complaint setting forth briefly the causes for which he claims damages, and the order of the commission in the premises. Such suit in the district court of the United States shall proceed in all respects like other Civil suits for damages, except that on the trial of such suit the fifidings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the plaintiff shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the plaintiff shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.